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3624

PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

# 26  
Walden  
6/14/04

In Re Application of: )  
NEOFYTIDES ET AL. )  
Serial No.: 09/613,615 ) Art Unit: 3624  
Filed: JULY 11, 2000 ) Technology Center (TC) 2100  
For: METHOD FOR ENABLING TRANSFER ) Examiner: G. Akers  
OF FUNDS THROUGH A COMPUTER )  
NETWORK (TWICE AMENDED) )

TRANSMITTAL OF APPEAL BRIEF  
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To the Honorable Board of Patent Appeals and Interferences:  
Pursuant to 37 C.F.R. § 1.192(a) we enclose herewith in triplicate an Appellant's Brief in in compliance with 37 C.F.R. § 1.192(b) and therewith Exhibits 1 through 9 (listed in the table below):

Exhibit 1	Copy of the Claims Under Appeal (3 pages)
Exhibit 2	Final Action (14 pages)
Exhibit 3	U.S. Patent No. 6,078,907 to <i>Lamm</i>
Exhibit 4	U.S. Patent No. 6,088,683 to <i>Jalili</i>
Exhibit 5	U.S. Patent No. 6,263,446 to <i>Kausik et al.</i>
Exhibit 6	U.S. Patent No. 5,909,492 to <i>Payne et al.</i>
Exhibit 7	U.S. Patent No. 6,247,047 to <i>Wolff</i>
Exhibit 8	U.S. Patent No. 6,189,787 to <i>Dorf</i>
Exhibit 9	Copy of Patent Application 09/613,615 (33 pages written specification, 10 sheets of drawings)

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief Patents, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 23, 2003.

John R. Harris

Respectfully submitted,

MORRIS, MANNING & MARTIN, L.L.P.

A handwritten signature in black ink, appearing to read "John R. Harris". The signature is written in a cursive style with a large, sweeping "J" and "H".

John R. Harris

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NETWORK (TWICE AMENDED) )

**APPEAL BRIEF**

Mail Stop Appeal Brief Patents  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450


Dear Sir:

**1. Real Party in Interest**

The real party in interest of the above-identified application is Western Union Financial Services, Inc., 6200 South Quebec Street, Suite 330K, Englewood, CO 80111, as evidenced by the assignment document recorded at Reel 011439, Frame 0726.

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John R. Harris

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**2. Related Appeals and Interferences**

No other appeals or interferences that would directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal are known to Appellant or Appellant's legal representative.

**3. Status of Claims**

All pending claims 30-37 and 39-51 (copies of which are attached hereto as **Exhibit 1**) were rejected in the final action mailed on February 10, 2003 (hereinafter "Final Action", a copy of which is attached hereto as **Exhibit 2**).

The sole, currently-pending independent Claim 30 was rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent 6,078,907 (hereinafter "*Lamm*", attached hereto as **Exhibit 3**) in view of U.S. Patent 6,088,683 (hereinafter "*Jalili*", attached hereto as **Exhibit 4**) in view of U.S. Patent 6,263,446 (hereinafter "*Kausik*", attached hereto as **Exhibit 5**) and further in view of U.S. Patent 5,909,492 (hereinafter "*Payne*", attached hereto as **Exhibit 6**).

Dependent Claims 31-37, 39, and 46-51 were rejected on the same basis as independent Claim 30.

Dependent Claims 40, 41, and 42 were rejected under 35 U.S.C. §103 as being unpatentable over *Lamm* in view of U.S. Patent 6,247,047 (hereinafter "*Wolff*", attached hereto as **Exhibit 7**) in view of *Jalili* in view of *Kausik* and further in view of *Payne*.

Dependent Claims 43, 44, and 45 were rejected under 35 U.S.C. §103 as being unpatentable over *Lamm* in view of U.S. Patent 6,189,787 (hereinafter “*Dorf*”, attached hereto as **Exhibit 8**) in view of *Jalili* in view of *Kausik* and further in view of *Payne*.

**4. Status of Amendments**

Each of the pending Claims (30-37 and 39-51) was rejected in the Final Action and no amendments have since been proposed by the Applicant.

**5. Summary of the Invention**

The invention (of the single independent claim, Claim 30) of the present application (hereinafter “Application,” a copy of which is attached hereto as **Exhibit 9**) is a computer-implemented method for enabling a transfer of funds through a computer network from a first party registered with a computer server to a second party not previously registered with the computer server. The computer server receives from the registered first party (hereinafter “payor”) payment instructions comprising a payment amount and an e-mail address of the second party (hereinafter “payee”). The computer server sends to the payee an e-mail message containing directions for the payee to receive the payment amount and transfers the payment amount to the payee if the directions are followed. In the most concise of terms for the purpose of discussing the patentability of the claims over the references of record: a payor, already registered with a computer server, is able to initiate and complete the transfer of funds to a payee, not previously registered with the computer server, having only the payee’s email address.

As shown in FIG. 1 of the Application (*see* Exhibit 9) and as detailed in the specification (Page 8, lines 15- 25), a payor 110 completes a money transfer of a payment 180 to the payee

130. An intermediary 160 transfers the payment from the payor 110 to the payee 130 and enables the payor to pay and the payee to receive through a variety of payment and receipt methods, respectively. In the invention of the pending claims, a payment enabler 170 is run by the intermediary 160 and is hosted by a computer server (Page 7, lines 27 et seq.) with which the payor 110 has previously registered as a user. An embodiment of a process of the registration of the payor with the computer server is shown in FIG. 5 and is detailed in the specification (Page 17, lines 15-30) and results in the storage of the payor's account information (Page 18, lines 1-8).

A logical flow diagram illustrating an embodiment of the computer-implemented method of the pending claims is provided in FIG. 6. In steps 610 the payor logs into the payor's account with the computer server and selects the "send money" option (Page 18, lines 15-20). The "send money" option is further detailed in FIG. 7 to include the payor's provisions of (in step 710) an e-mail address of the payee (Page 19, lines 29-31) and (in step 720) the payment amount (Page 20, lines 1-3).

In steps 630 and 635 of FIG. 6, the computer server determines that the payee is not previously registered with the server ("NO" following step 635; *see also* Page 19, lines 1-3). The payee may then register ("YES" following step 660; *see also* Page 19, lines 14-15) to facilitate the computer server's transferring of the payment amount to the payee in step 690 (Page 19, lines 23-24).

Thus, the specification of the Application includes a clear description of the invention. As discussed in the Summary of the Invention, the invention allows an individual to register for an account through which the individual can make payments to other individuals (Page 2, lines

24-26). The person to whom the payment is directed need not have already registered for an account (Page 3, lines 2-4). In the embodiment of the invention recited in sole independent Claim 30 (*see* Exhibit 1), a first party (payor) has previously registered with a computer server through which directions for receiving a payment are directed to a second party (payee) not previously registered with the computer server.

Furthermore, the specification of the Application describes the problems being solved. Although the present invention is useful in enabling an individual to make a payment to a merchant, which may or may not have a means for accepting electronic funds, it is even more advantageous in enabling an individual to make a monetary gift or transfer to another individual, who does not, at the initiation of the payment, have any means for receiving electronic funds. The present invention addresses these and other problems in the industry.

Further, the claimed invention as a whole produces a useful, concrete, and tangible result (*State Street Bank & Trust v. Signature Financial Group Inc.*, 149 F.3d 1368, 47USPQ2d 1596 (Fed. Cir. 1998)). As recited succinctly in the sole pending independent Claim 30 (*see* Exhibit 1), the invention enables a transfer of funds through a computer network from a first party registered with a computer server of the computer network to a second party not previously registered with the computer server. Such a transfer of funds constitutes a useful, concrete, and tangible result.

**6. Primary Issue**

Did the U.S. Patent Office properly reject independent Claim 30 and all of its dependent claims, Claims 31-37 and 39-51, under 35 U.S.C. §103, as being obvious over *Lamm* in view of *Jalili* in view of *Kausik* and further in view of *Payne*?

7. **Grouping of Claims**

All currently pending claims, Claim 30 and its dependent Claims 31-37 and 39-51, should be grouped together. Each of Claims 31-37 and 39-51 either directly or indirectly depend from the sole independent Claim 30, which the Applicant respectfully asserts has been and remains in condition for allowance based on the prior art of record.

8. **Argument**

The Patent Office improperly rejected independent Claim 30 and all of its dependent claims, Claims 31-37 and 39-51, under 35 U.S.C. §103 as being obvious over *Lamm* in view *Jalili* in view of *Kausik* and further in view of *Payne*?

Applicant submits that sole independent Claim 30, as twice amended, patentably defines over the references of record, is not obvious in light of the references of record, and is in condition for allowance. Applicant further submits that the features of each dependent claim, particularly Claims 31-37, 39, and 46-51, when combined with the features of Claim 30, also patentably define over the references of record, are not obvious in light of the references of record, and are in condition for allowance.

Applicant will show herein that the Examiner improperly ignored material claim limitations in formulating the erroneous rejection of Claim 30, and furthermore that *Lamm*, *Jalili*, *Kausik*, and *Payne* (separately and in all combinations) fail to teach, motivate, suggest, or render obvious the methods of sole independent Claim 30.

The factual determination necessary to a finding of obviousness was set forth in the seminal case of *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 U.S.P.Q. 459, 467 (1966):



Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

In ascertaining the differences between the prior art and the claims at issue, all of the limitations of the claim must be considered especially when these limitations are missing from the prior art. The Court of Appeals of Federal Circuit held that a reference did not render the claimed combination *prima facie* obvious in the case of *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), because, *inter alia*, the examiner ignored a material claim limitation that was absent from the reference.

According to 35 U.S.C. § 103, a claim should be allowable unless “the differences between the subject matter sought to be patented and the prior art are such that *the subject matter as a whole* would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains...” (emphasis added). In failing to consider the claim limitations, the Examiner failed to consider the subject matter of the invention as a whole. *See also In re Donaldson Co., Inc.*, 16 F.3d 1189, 1193, 29 U.S.P.Q.2d 1845, 1848 (Fed. Cir. 1994) (*en banc*).

The United States Court of Appeals for the Federal Circuit has explained the burden of the Patent Office with respect to making out a *prima facie* case of obviousness.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the Appellant. *Id.* “A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” [citations omitted] If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned.

*In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993).

Further, according to the Patent Office's own publication for training its Patent Examiners titled Formulating and Communicating Rejections Under 35 U.S.C. 103 for Applications Directed to Computer-Implemented Business Method Inventions, at Section III.A:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the applicant has done. To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. Both the suggestion to make the claimed combination and the reasonable expectation of success must be founded in the prior art and not in applicant's disclosure.

Finally, in rejecting Claim 30 and dependent Claims 31-37, 39, and 46-51, the Examiner cites *Lamm*, *Jalili*, *Kausik*, and *Payne* for numerous teachings and propositions allegedly relevant to the claim elements and limitations of Claims 30-37, 39, and 46-51. First, the Examiner does not identify any suggestion or motivation in any of the cited references to modify the reference itself or to combine the references in such a way that would render Claim 30 obvious. Moreover, the Examiner does not and cannot combine the references to teach or suggest all of the claim limitations. Further, the Examiner has (i) failed to explain how the references cited either expressly or impliedly suggest the claimed invention and (ii) failed to present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

In light of all of the above, the rejection of Claim 30 and its dependent claims ought to be withdrawn for the simple reason that the Examiner's application of the references to all of these claims, and to Claim 30 in particular, is confused and impossible to sort out. Rather than apply the references to the relevant elements and limitations of the independent claim and then to each dependent claim, the Examiner merely makes general statements that purportedly apply to each hodgepodge of claims the Examiner has rejected.

Regarding Citations of *Lamm*

Claim 30 clearly recites a method for enabling a transfer of funds from a registered first party to a previously unregistered second party. The Examiner's interpretation of Claim 30 as revealed in the Final Action (*see* Exhibit 2: Page 3, lines 13-15) includes no understanding of the direction of the transfer enabled in Claim 30. The Examiner states in the Final Action (*see* Exhibit 2: Page 3, lines 13-15) that "Lamm does not disclose a method for transferring funds through a network between a first party registered with the computer server of the network and a second party not previously registered with the computer server." Though the applicant concurs with this view, this statement reveals the failing of the Examiner to consider the claim limitations, and therewith the failing of the Examiner to consider the subject matter of the invention as a whole. The limitation of Claim 30 that the Examiner has failed to consider is that the method enables a transfer from a registered party to a previously unregistered party. A broader method reciting potentially bi-directional transfers between registered and unregistered parties was apparently examined and rejected by the Examiner without consideration of the real recitation of Claim 30 and the limitations carried therewith.

The Applicant respectfully submits that *Lamm* does not teach, suggest, motivate, or render obvious any method for enabling a registered payor to transfer funds to, through a computer server, an intended payee previously unregistered with the computer server, as recited by Claim 30. Specifically, *Lamm* does not teach, suggest, motivate, or render obvious the steps of (i) receiving from the first party payment instructions comprising a payment amount and an email address of the second party; (ii) sending to the email address of the second party an email containing directions for receiving the payment amount; and (iii) if the directions are followed, transferring the payment amount to the second party; as required by claim 30.

*Lamm* merely discloses a method and system by which registered payees and a registered payor exchange billing information and payments by exchanging electronic files, which are free of sensitive and private information (*see* Exhibit 3, *Lamm*: Col. 4, lines 8-20). *Lamm* requires the intended recipient of funds (the payee or “billing party”) to be previously registered with the “processor computer” so that the payor (or “billed party”) may select potential payees during the registration process of the payor (*see Lamm*: Col. 8, lines 56-60; Col. 9, lines 37-40; Col. 10, lines 9-11). Furthermore, *Lamm* contemplates that the processor computer be operated directly or in close association with the payee, as denoted by dotted lines associating the processor computer 20 and billing party legacy computer 24 to together make up the billing/processor computer system 26 as shown in FIGS. 4 and 5 and as discussed in the specification (Col. 7, lines 24-37). Such an association teaches away from a method in which the intended recipient of funds (i.e., the payee) is previously unregistered with the computer server - as recited by claim 30 of the current patent application.

Therefore, as *Lamm* does not render obvious the methods of the pending sole independent Claim 30, any proper rejection of Claim 30 based on prior art must rely on the teachings of other references. However, the other references relied upon by the Examiner in the rejection of Claim 30, namely *Jalili*, *Kausik*, and *Payne*, separately and in all combinations with and without *Lamm* fail to teach, motivate, suggest, or render obvious the methods of Claim 30.

Regarding Citations of *Jalili*

In rejecting Claim 30 in the Final Action (*see* Exhibit 2), the Patent Examiner cites (Page 3, lines 15-16) *Jalili* for the alleged teaching of “a method for transferring funds through a network between a first party registered with the computer server of the network and second party not previously registered with the computer server.” Applicant respectfully traverses the rejection and submits that *Jalili* does not teach, suggest, motivate, or render obvious any of the steps of Claim 30.

Rather, *Jalili* merely discloses a method for providing, over a secure communication path, such as a telephone system, authorization for the completion of a transaction initiated over an insecure communication path, such as the Internet (*see* Exhibit 4, *Jalili*: Abstract). The teaching of *Jalili* is that a customer (i.e., payor) be registered with a processing center, which administers authorizations and handlings of payments to merchants (Col. 1, lines 59-66), without specific teaching on the subject of merchant registration. However, *Jalili* also teaches that the first submission of data regarding a particular transaction to the processing center be made by the recipient of the funds (in *Jalili*, the merchant or payee), which is in stark contrast with the requirements of Claim 30, where the instructions come from the first party or payor.

According to *Jalili*, a particular transaction is initiated beyond the knowledge of the processing center in Step 1, as discussed in the specification (Col. 2, lines 18-27) and as illustrated in the Figure by arrow 1, which terminates at each of the customer (payor) and merchant (payee) without interaction with the processing center. Data regarding the transaction initiated in Step 1 is first submitted to the processing center by the merchant in Step 2, as discussed in the specification (Col. 2, lines 28-31) and as illustrated in the Figure by arrow 2, which terminates at each of the merchant and processing center without interaction with the customer. In Step 3 (Col. 2, lines 40-41), the customer accesses the processing center and, in Step 4 (Col. 2, line 49-52), is presented with outstanding invoices. Thus, in *Jalili*, the flow of transaction-specific information through the processing center comes from the merchant (payee) and results in the presentation of an invoice to the customer (payor). *Jalili* does not teach, suggest, motivate, or render obvious Claim 30, which requires the (i) receiving from the first party (payor) payment instructions comprising a payment amount and an email address of the second party (payee); (ii) sending to the email address of the second party an email containing directions for receiving the payment amount; and (iii) if the directions are followed, transferring the payment amount to the second party.

Regarding Citations of *Payne*

The Final Action also cites *Payne* in the rejection of Claim 30 stating “Payne discloses a computer implemented method for providing a computer network money request service including identification of individuals by network addresses (Fig 2A-2I) (col 5 line 26 et seq.) and sending a registration message to unregistered individuals to register and authorize payment

(col 5 line 57)(col 6 line 9) and web page link (col 6 line 15 et seq) to register and complete payment” (see Final Action, Exhibit 2, Page 3, line 18 et seq.). Applicant respectfully submits that this discussion of *Payne* is not germane to Claim 30 because Claim 30 has no limitations toward methods for registering any parties.

Nonetheless, *Payne* merely illustrates a conventional process by which an individual is enabled to purchase an item through an electronic commerce website. *Payne* (see Exhibit 6) teaches that a buyer computer contacts a payment computer with a “URL A,” which includes a merchant account identifier and a payment URL authenticator. The authenticator is defined by a key shared by the merchant and the operator of the payment computer (Col. 5, lines 26-47). Thus a relationship exists between the merchant and the operator of the payment computer. That relationship pre-exists any transaction-specific data from the buyer computer. In other words, a computer server is intermediate a merchant (payee) and a buyer (payor), and the payee is already registered with the intermediate computer server prior to the initiation of any specific transaction involving a payor.

This pre-existing relationship is further supported in the specification of *Payne* wherein it is stated that the merchant computer may be operated by “a manager of the network sales system” (Col. 4, lines 38-40). Similarly, the payment computer typically is operated by “a manager of the network sales system” (Col. 4, lines 40-41). Thus, not only does a relationship between the merchant and the payment computer exist prior to any contact by the buyer, *Payne* teaches that the merchant (payee) and the operator of the payment computer are likely the same entities. Thus, *Payne* does not teach, motivate, suggest, or render obvious, alone or in combination with

any of the references of record, any method for enabling a registered payor to identify and transfer funds to, through a computer server, an intended payee previously unregistered with the computer server, as recited by Claim 30 of the present application.

Regarding Citations of *Kausik*

In the Final Action (*see* Exhibit 2, Page 4, lines 7-16), the Examiner cites lengthy portions of *Kausik* in the rejection of Claim 30, namely, each of: the Abstract; FIG. 1; Col. 2, lines 10-54; and Col. 3, line 21, through Col. 4, line 63. Applicant respectfully traverses this rejection and submits that to the best understanding of the Applicant, *Kausik* does not teach, disclose, or suggest any of the steps of Claim 30.

*Kausik* is directed merely to a method and system by which a system user is able to freely roam and authenticate himself with a central computer when the system user is not at his normal computer (i.e., one that has the system user's authentication credentials maintained in storage) and without requiring the system user to carry and use a hardware token, such as a smart card. While Applicant acknowledges that *Kausik* may be germane to authentication methods (*see* Exhibit 5, Col. 4, lines 21-24), Applicant respectfully submits that *Kausik* does not motivate, suggest, or render obvious, alone or in combination with any of the references of record, the method of pending Claim 30.

Regarding Citations of *Wolff* and *Dorf*

The Final Action also rejects several dependent claims (namely, Claims 40-45) based on *Wolff* or *Dorf*. It is respectfully submitted that such dependent claims are allowable, regardless of



the teachings of *Wolff* or *Dorf*, because Claim 30 is allowable. Thus, detailed discussion of these references is unnecessary at this point. Under the doctrine of *In re Fine*, 5 U.S.P.Q.2d 1597 (Fed. Cir. 1988), if an independent claim is allowable, then claims dependent thereon should also be allowable since dependent claims merely add further limitations.

### CONCLUSION

The Final Action relies upon *Lamm*, *Jalili*, *Kausik*, and *Payne* in rejecting sole independent Claim 30 and Claims 31-37, 39, and 46-51 each depending directly or indirectly from Claim 30. *Wolff* and *Dorf* are relied upon by the Final Action in the rejections of dependent Claims 40-42 and 43-45, respectively.

Applicant has shown that in the Final Action, which sets forth in the rejection of Claim 30, the Examiner failed to consider all of the material limitations of the claim rejected. Further, the Examiner failed to satisfy the three basic criteria for establishing a *prima facie* case of obviousness for computer-implemented business method inventions. In so doing, according to the doctrine of *In re Fine*, *supra*, and according to the requirements of the U.S. Patent Office's own procedures, the Examiner failed to make out a *prima facie* case of obviousness. Applicant accordingly respectfully submits that the rejection of Claim 30 of the Final Action is improper and should be overturned under the doctrine of *In re Rijckaert*, *supra*.

Furthermore, Applicant has shown that *Lamm*, *Jalili*, *Kausik*, *Payne*, *Wolff*, and *Dorf* separately and in all combinations fail to motivate, suggest, or render obvious a computer-implemented method for enabling a transfer of funds through a computer network from a first party (payor) registered with a computer server of the computer network to a second party

(payee) not previously registered with the computer server, comprising the steps of: (i) receiving from the first party payment instructions comprising a payment amount and an email address of the second party; (ii) sending to the email address of the second party an email containing directions for receiving the payment amount; and (iii) if the directions are followed, transferring the payment amount to the second party. In other words, not only does the Final Action fail to put forth a proper rejection of sole independent Claim 30, no proper rejection of Claim 30 based on the references cited in the Final Action can be put forth.

Applicant has shown that Claim 30 patentably defines over the prior art of record. Accordingly, under the doctrine of *In re Fine, supra*, each dependent claim, Claims 31-37 and 39-51, likewise defines over the same prior art of record. For at least these reasons, the Board should reverse the rejections of Claims 30-37 and 39-51 and find such claims to be in condition for allowance.

Respectfully submitted,

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